

REMARKS CONCERNING THE AMENDMENTS

The above amendments were made in an attempt to more clearly define the present invention and to respond to any and all issues raised in the Office Action. The term “potentially” has been removed from the claims.

SUMMARY OF THE OFFICE ACTION

1) Claims 5-15 have language to which the Examiner raises an objection, specifically “potentially play.”

The term “potentially” has been removed from the claims. This rejection has been removed by the amendment.

2) Claims 1-16 are rejected as lacking utility.

The purported basis for this rejection is that “Claims 1-16 lack patentable utility.

3) Claims 1-16 have been rejected under 35 USC 102(e) as anticipated by Slomiany, US Patent No. 6,612,927.

RESPONSE TO THE OFFICE ACTION

1. Claims 5-15 have language to which the Examiner raises an objection, specifically “potentially play.”

The word “potentially” has been removed from the claims. The rejection has been overcome.

2. Claims 1-16 are rejected as lacking utility.

It is asserted in the rejection that “Applicant is simply claiming the rules of a poker game player [*sic*, played] by at least two players. Applicant’s invention appears to be simply abstract ideas, there is no transformation.”

This rejection is respectfully traversed. As is well known to the patent practitioners in the Patent and Trademark Office who practice in this field of technology (e.g., Class 273), novel and unobvious methods of playing poker-type games on tables or on slot machines are useful within the terms of 35 USC 101.

It is clear that the U.S. Patent and Trademark Office has readily and consistently accepted the use of the term “poker-type” to describe games and methods of playing in the claims of U.S. Patents in situations substantially identical or parallel to the use of the term in the present claims. A list of the issued patent using this term in the claims includes at least the following U.S. Patent Nos.:

1. 6,923,446;
2. 6,698,759;
3. 6,601,848;
4. 6,439,574;
5. 6,334,613;
6. 6,299,170;
7. 6,131,907;
8. 6,042,118;
9. 5,851,147;
10. 5,799,945;
11. 5,762,340;
12. 5,664,781;
13. 5,167,413;
14. 5,118,114; and
15. 5,100,137

Besides the fact that there are many U.S. Patents issued within the past 10 years with this identical language in it, this term has a well established generic meaning in the art. Not only are there the 16 patents listed above with the term in the claims, but there are 88 U.S. Patents with the term used in the specification and even the title of the patent (see, U.S. Patent No. 6,793,220 (“Pai gow poker-type card game of chance with bonuses on partial hands,” Feola).

It should be absolutely clear that the rejection is in error as asserting lack of utility because of the consistent acceptance and use of the term by the PTO in parallel situations and the clear meaning of the term to those skilled in the art. The claims recite specific steps that are performed by players and or the house (by dealers or a machine/processor) and the claims comply with the utility requirements of 35 USC 101. This rejection is in error.

Additionally, rather than abstract ideas, the claims recite specific and definitive positive steps and actions that must be performed, as is consistent with a process claim. To exemplify this, claim 5 is excerpted and highlighted below to show such positive steps, as opposed to mere ideas:

A method of playing a sequence of rounds in a wagering game:

a) a **player placing a first bet** to play in a sequence of games on an undivided first bet;

b) the **player receiving** a first set of symbols from which a poker rank may be determined in reading the symbols;

c) **determining the rank** of the first set of symbols as a first poker rank, **the game ending** if the first poker rank does not equal a predetermined poker rank and **continuing to a following step** d) if the first poker rank does exceed or equal the predetermined poker rank;

d) **the player receiving at least a second set of symbols** from which a poker rank may be determined in reading the symbols;

e) **determining the poker rank** of the second set of symbols;

f) **comparing the poker rank** of the second set of symbols to the rank of the first set of symbols;

g) **determining** whether the poker rank of said second set of symbols ties or exceeds the first poker rank; and

h) **resolving** the first bet according to a payable with respect to whether the second poker rank ties or exceeds the first poker rank.

As can be seen, this claim does not merely recite a concept, but rather recites specific steps and actions. The rejection is clearly in error.

3. Claims 1-16 have been rejected under 35 USC 102(e) as anticipated by Slomiany, US Patent No. 6,612,927.

This rejection is in error. As will be shown in the following comparison and arguments, Slomiany does not anticipate the invention as claimed.

CLAIM 1	SLOMIANY	COMMENTS
A method of playing a wagering game: a player placing at least one bet;	a method of playing a game, where a player is initially provided with a first stage game of chance upon which a first wager is placed by the player	
A player receiving a first set of symbols from which a poker rank may be determined in reading the symbols;	"...the game stages can be the same type of game (e.g., slots), or different games (e.g., slots, cards, dice, roulette, etc.)."	
determining the poker rank of the first set of symbols as a first poker rank;	"The first stage game is then played, with the previously described determination of which of the winning and losing conditions is presented by the first stage game as played. Again, if a winning condition is presented, the player advances to the second stage game, but if a losing condition is presented by the first stage game as played, the game is over and at least some (and most preferably all) of the second (and any subsequent) wager is lost."	There is no comparison of poker rank hands by Slomiany. The only comparison to previous events is where in the dice embodiment Slomiany determines whether the same number on a die or dice are present in distinct rolls. This is not a comparison of ranks, but identity of symbols, without count or rank.
a player receiving at least a second set of symbols from which a poker rank may be determined in reading the symbols;	"This second stage is played, with a determination of which of the winning and losing conditions is presented by the second stage game as played."	
determining the poker rank of the second set of symbols;	"This second stage is played, with a determination of which of the winning and losing conditions is presented by the second stage game as played."	There is no comparison of poker rank hands by Slomiany. The only comparison to previous events is where in the dice embodiment Slomiany determines whether the same number on a die or dice are present in distinct

		rolls. This is not a comparison of ranks, but identity of symbols, without count or rank.
comparing the poker rank of the second set of symbols to the poker rank of the first set of symbols;	"In this first embodiment, the criterion for advancing from one stage to the next is any win on the current stage."	The rejection asserts that this is equivalent to Claimed "comparison." THIS IS AN ERROR. The win is an independent event, not a comparison event, except for the matching of dice numbers.
determining whether the poker rank of said second set of symbols ties or exceeds the first poker rank;	"Each stage is again independent of the previous stage."	Each hand is won on its own merits and not based on a comparison with previous hands.
resolving the at least one bet with respect to whether the second poker rank ties or exceeds the first poker rank.	"Each stage is again independent of the previous stage."	Even if the pay tables change, there is no comparison with previous hands to effect a win.

As can be seen, there is absolutely no teaching of comparing poker ranks of subsequent hands to poker ranks of earlier hands to determine winning events and payouts in a sequence of poker hands.

Note the highlighted events in other claims, especially all of the remaining independent claims that contain similar and additional limitations (which are **highlighted**) that are not taught by Slomiany.

4. (CURRENTLY AMENDED) The method of claim 1 wherein after resolving the at least one bet, **the second poker rank becomes a base poker rank in a next round of play of receiving a third set of symbols and comparing a poker rank for the third set of symbols to the second poker rank, wherein if the third poker rank ties or exceeds the second poker rank, resolving the at least one bet with respect to at least one of whether the third poker rank ties or exceeds the second poker rank** and b) **how many consecutive rounds have been played where a present hand poker rank has exceeded a previous hand poker rank.**

5. (CURRENTLY AMENDED) A method of playing a sequence of rounds in a wagering game:

a) **a player placing a first bet to play in a sequence of games on an undivided first bet;** [NOTE: Slominay places distinct wagers on each sequence, not a running original wager.]

b) the player receiving a first set of symbols from which a poker rank may be determined in reading the symbols;

c) determining the rank of the first set of symbols as a first poker rank, the game ending if the first poker rank does not equal a predetermined poker rank and continuing to a following step d) if the first poker rank does exceed or equal the predetermined poker rank;

d) the player receiving at least a second set of symbols from which a poker rank may be determined in reading the symbols;

e) determining the poker rank of the second set of symbols;

f) **comparing the poker rank of the second set of symbols to the rank of the first set of symbols;**

g) **determining whether the poker rank of said second set of symbols ties or exceeds the first poker rank;** and

h) resolving the first bet according to a payable with respect to whether the second poker rank ties or exceeds the first poker rank.

10. (CURRENTLY AMENDED) A method of playing a sequence of rounds in a wagering game:

a) **a player placing an initial wager of at least a first bet to play in a sequence of games on an undivided first bet;** [NOTE: As pointed out above, Slomianay places individual wagers on each play, not a running wager.]

b) the player receiving a first set of symbols from which a poker rank may be determined in reading the symbols to determine a poker rank;

c) determining the rank of the first set of symbols as a first poker rank, the game ending if the first poker rank does not equal a predetermined poker rank and

continuing to a following step d) if the first poker rank does exceed or equal the predetermined poker rank;

d) the player receiving at least a second set of symbols from which a poker rank may be determined in reading the symbols;

e) determining the poker rank of the second set of symbols;

f) comparing the poker rank of the second set of symbols to the poker rank of the first set of symbols;

g) determining whether the poker rank of said second set of symbols ties or exceeds the first poker rank; and

h) resolving the at least a first bet according to a payable with respect to whether the second poker rank ties or exceeds the first poker rank; wherein at any time after resolution of step h) **when the second rank ties or exceeds the first poker rank, the player is provided with an option to withdraw all or some of the initial wager, continuing the sequence of rounds in which consecutive poker ranks are compared with less than all of the initial wager if less than all of the initial wager is withdrawn.**

13. (CURRENTLY AMENDED) A method of playing a potential sequence of X rounds in a wagering game, where X is a whole integer of greater than 2:

a) a player placing an initial wager of at least a first bet to play in a sequence of games on an undivided first bet;

b) the player receiving a first set of symbols from which a poker rank may be determined in reading the symbols;

c) determining the poker rank of the first set of symbols as a first poker rank, the game ending if the first poker rank does not equal a predetermined poker rank and continuing to a following step d) if the first poker rank does exceed or equal the predetermined poker rank;

d) the player receiving at least a second set of symbols from which a poker rank may be determined in reading the symbols;

e) determining the poker rank of the second set of symbols;

f) comparing the poker rank of the second set of symbols to the poker rank of the first set of symbols;

g) determining whether the poker rank of said second set of symbols ties or exceeds the first poker rank; and

h) resolving the at least a first bet according to a payable with respect to whether the second poker rank ties or exceeds the first poker rank;

wherein when in playing the sequence of X rounds, when a poker rank of one hand in a subsequent round fails to exceed a poker rank of a preceding hand, any remaining rounds up to at least the X rounds may be played according to steps b), c), d), e), f), g) and h) as if a first of the remaining rounds were a first round.

16. (CURRENTLY AMENDED) A method of playing a wagering game:

a player placing an initial wager of at least one bet;

the player receiving a first set of symbols from which a poker rank may be determined in reading the symbols;

determining the poker rank of the first set of symbols as a first poker rank to see if the first poker rank equals or exceeds a first predetermined poker rank;

if said first poker rank exceeds the first predetermined poker rank, the player receiving at least a second set of symbols from which a poker rank may be determined in reading the symbols;

determining the poker rank of the second set of symbols;

comparing the poker rank of the second set of symbols to the poker rank of the first set of symbols;

determining whether the poker rank of said second set of symbols either ties or exceeds the first poker rank;

resolving the at least one bet with respect to whether the second poker rank ties or exceeds the first poker rank,

wherein, if the second poker rank does not exceed the first poker rank, providing a third set of symbols to be compared to a second predetermined poker rank that is higher than said first predetermined poker rank and comparing a third poker rank

of the third set of symbols to the second predetermined poker rank and resolving at least a part of the initial wager against a payable if the third poker rank exceeds the second poker rank.

It is clear that the rejection is in error, as the consecutive wins in Slomiany are a result of independent evaluation of each poker hand, not a comparison of hand ranks in sequential poker hands. There are numerous elements of claimed process and play of the game that are not taught by Slomiany. The rejection is in error and must be withdrawn.

CONCLUSION

Applicants have made a best effort to address the issues raised in the Office Action. **If there is any question remaining regarding this application, the Examiner is requested to call the Attorney of Record at 952.832.9090 to resolve the issues.**

Applicants assume the application is now in proper order and in condition for examination. Please direct any inquiries to the undersigned attorney at (952) 832-9090.

Respectfully submitted,

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CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being deposited in the United States Postal Service, as first class mail, with sufficient postage, in an envelope addressed to: Mail Stop Missing Parts, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on 25 October 2005.

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Signature